

**INVITATION FOR BIDS
IFB**

Issue Date: March 4, 2005 IFB #: 724-05-005

Title: CARPENTRY SERVICES

Commodity Code: 91200

Issuing Agency: Commonwealth of Virginia
Catawba Hospital
P. O. Box 200
5525 Catawba Hospital Drive
Catawba, Virginia 24070-0200

Using Agency and/or Location
Where Work Will Be Performed: Commonwealth of Virginia
Catawba Hospital
5525 Catawba Hospital Drive
Catawba, Virginia 24070-0200

Period of Contract: From APRIL 1, 2005 Through FEBRUARY 28, 2006 *(Renewable).

Sealed Bids Will Be Received Until 2:00 p.m., March 29, 2005 For Furnishing Services Described Herein and Then Opened In Public. All Inquiries For Information Should Be Directed To The: **Office of Purchasing & Contracting**. Phone: 540-375-4360. **IF BIDS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE. IF BIDS ARE HAND DELIVERED, DELIVER TO:**

CATAWBA HOSPITAL, OFFICE OF PURCHASING & CONTRACTING, BUILDING 16,
5525 CATAWBA HOSPITAL DRIVE, CATAWBA, VIRGINIA 24070-0200

In Compliance With This Invitation For Bids And To all The Conditions Imposed Therein, The Undersigned Offers and Agrees To Furnish Services At The Price(s) Indicated In Section IV, Pricing Schedule.

| | | | | |
|---|--|-------------------------|--------------------------|---------------------|
| LICENSED CLASS: | | VA CONTRACTOR #: | | SPECIALTY: |
| Name and Address of Firm: | | | Date: | |
| | | | By: | |
| | | | | Printed Name |
| | | | Signature in Ink: | |
| Zip Code: | | Title: | | |
| FEI/FIN No: | | Telephone No.: | | |
| Are You A Registered eVA Procurement Vendor? <input type="checkbox"/> Yes <input type="checkbox"/> No Date Completed: | | | | |
| Are You A Certified Small, Woman, or Minority Vendor? <input type="checkbox"/> Yes <input type="checkbox"/> No Certification No.: | | | | |

***A MANDATORY PRE-BID CONFERENCE:** A mandatory pre-bid conference will be held at 10:00 a.m. on March 17, 2005, in the Main Hospital Building, No. 15, First Floor Conference Room. The purpose of this conference is to allow potential Bidders an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

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I. PURPOSE

The intent of this solicitation is to establish a contractual price agreement to furnish labor and materials to perform carpentry work on an as needed basis at Catawba Hospital hereafter referred to as the “Agency”, P. O. Box 200, Catawba, Virginia, 24070, an Agency of the Commonwealth of Virginia. The period of the contract shall be for one (1) year with the option to renew for four (4) additional one (1) year periods.

II. SCOPE OF WORK

The Contractor shall furnish all labor, materials, tools, equipment, and supervision necessary for the complete and satisfactory provision of carpentry services. The Contractor shall be expected to provide routine carpentry services at the Agency facilities such as office, hallways, and public spaces. Services will include, but not be limited to, demolition, rough carpentry, finish carpentry, masonry, sheetrock and taping, and coordination with other trades as required.

A. CONTRACTOR REQUIREMENTS

It is mandatory that the Contractor meet the following requirements:

1. The Contractor must have been regularly and actively engaged in the carpentry business with a thorough knowledge of techniques, tools, and materials for a minimum of five years.
2. The Contractor must employ five full-time carpenters who can plan and execute carpentry work. Duties include the receipt of work assignments, review of the work site, planning of the project means and methods, preparation of the work area, and protection of furniture, equipment and other no-work related structures, as well as cleaning of the work area upon completion. Ability to understand work orders and read blueprints is required. Physical ability to manipulate tools and equipment is required for the work. At least one worker on site must possess the skills required to coordinate multiple jobs and supervise employees. The Agency reserves the right to refuse to accept services from any personnel deemed by the Agency to be unqualified or unable to perform assigned work. The Contractor shall provide evidence of qualifications for any personnel performing work under this contract if requested by the Agency.
3. The Contractor must be able to supply experienced workers to complete the daily work assignments under the supervision of the Contractor. The Agency is not responsible for direct supervision of the workers.
4. The Contractor must maintain offices in Virginia which shall be staffed by the Contractor’s own employees during regular working hours.
5. The Contractor must be able to respond to requests for measurements and job estimates within 24 hours.
6. Workers must wear proper attire for the work being performed, including appropriate personal protective equipment, provided by the Contractor at their own expense.
7. The Contractor must be able to ensure adherence to proper safety precautions and requirements needed to do the job. The Contractor is responsible to supply safety equipment as needed to perform the work.
8. The Contractor must be capable of coordinating with other trades performing work on designated projects (i.e.) electricians, plumbers, painters, carpet installers, etc.

9. When necessary, the Contractor shall be capable of providing Electrical, Plumbing, and Mechanical Subcontractors.
 - a. *Electrical Subcontractor:* Shall be a licensed electrician, with the ability to perform all electrical tasks in the execution of the project; and shall comply with all applicable Federal, State, and local laws, codes and regulations in connection with the prosecution of the work. The Contractor shall furnish names, qualifications, experience, and necessary license of their proposed subcontractor.
 - b. *Plumbing Subcontractor:* Shall be a licensed plumber, with the ability to perform all plumbing tasks in the execution of the project; and shall comply with all applicable Federal, State, and local laws, codes and regulations in connection with the prosecution of the work. The Contractor shall furnish the names, qualifications, experience, and necessary license of their proposed subcontractor.
 - c. *Mechanical Subcontractor:* Shall be a licensed mechanical contractor, with the ability to perform all mechanical tasks in the execution of the project; and shall comply with all applicable Federal, State, and local laws, codes and regulations in connection with the prosecution of the work. The Contractor shall furnish the names, qualifications, experience, and necessary license of their proposed subcontractor.

The Agency reserves the right to refuse to accept services from any personnel deemed by the Agency to be unqualified or unable to perform assigned work.

10. The Contractor shall be able to start all non-emergency projects within five (5) working days of authorization from the Agency. The Contractor shall complete each non-emergency job within the time specified in their project estimate. The Contractor shall respond to calls for emergency service within two (2) hours after notification from the Agency. For the purpose of this solicitation, an "emergency" is defined as any conditions, which are a threat to the health, welfare or safety of people and/or property, as determined solely by the Agency. The Contractor shall provide a twenty-four hour answering service, or other means of contact agreeable to the Agency.
11. The Contractor must submit a Certificate of Insurance and Contractor's License(s), evidencing the required coverage, with the bid.
12. Other Requirements:
 - a. *In-service Training:* All Contractor employees shall conform to Agency policies while in the Agency's facilities at no additional cost to the Agency. The Contractor or designated employees shall attend a Hospital Orientation course that includes, but not limited to: Patients Rights, HIPAA, Patient Abuse, Fire Safety and General Safety, Infection Control, Key Control, Security, and Identification Badges.

Within 10 days of award, the successful bidder shall contact the Contract Manager, Roger Richards, 540-375-4332, to schedule orientation classes.

Contractor employees shall be required to work on patient units under circumstances unique to that particular unit. Circumstances will be explained in the orientation session.

- b. *Key(s) and Identification Badge(s)*: The Contractor employees must sign-in and out with the Buildings and Grounds Representative during normal working hours and the Mailroom staff after normal working hours. The sign in/out times will be utilized to verify billable charges. The Contractor will be issued key(s) and identification badge(s) and will be required to sign a Key Agreement. Lost of key(s) could result in replacement of all Agency locks with the Contractor bearing all cost associated with the replacements. Identification badge(s) shall be worn at all times.
- c. *Parking Policy*: All Contractors' vehicles must be parked in designated parking spaces.

B. QUALITY OF WORKMANSHIP

All work shall be quality work performed according to the standards of the industry, and to the complete satisfaction of Catawba Hospital.

C. CONTRACTOR PERSONNEL

The Contractor shall use trained personnel who are directly employed/supervised by the Contractor.

D. INSPECTION

1. The Buildings & Grounds Superintendent or his designee reserves the right to inspect any and all work in progress or completed. Any omission or failure on the part of the Agency representative to disapprove or reject inferior or defective work or materials shall not be construed to be an acceptance of any such work or material. If any defective work or material is found during inspection, the Contractor shall remove or repair, at his own expense, such defective work or material rejected and shall rebuild and/or replace same without charge.
2. If the Contract documents, the Agency's instructions, or laws, ordinances or regulations of any public authority require any work to be tested or approved, The Contractor shall give the Agency timely notice of its readiness for inspection by the proper authorities. If any such work shall be covered up without approval or consent, it must, if required by the Agency or other proper authorities, be uncovered for examination at Contractor's expense.

E. WARRANTY OF MATERIALS AND WORKMANSHIP

1. All work provided under this contract shall have, as a minimum, a one year warranty from the date of final acceptance thereof against any latent defects, design, materials, workmanship and installation.
2. The Contractor warrants that, unless otherwise specified, all materials and equipment, incorporated in the work under the contract shall be new and first class. The Contractor further warrants all workmanship shall be first class and shall be performed by persons qualified in their respective trades.
3. Work not conforming to these warranties shall be considered defective.
4. The Contractor shall promptly correct work rejected by the Agency as failing to conform to the requirements of the Scope of Work for each project. The Contractor shall bear the cost of correcting such rejected work. Recurring problems, which the Agency determines to be directly attributable to the work of the Contractor, shall be remedied by the Contractor, at no additional expense to the Agency and could result in termination of the contract for default.

F. HOURS OF WORK

It is intended that the Contractor shall accomplish the majority of work on a straight time basis. Work shall not be accomplished on an overtime basis unless prior approval has been obtained from the Buildings and Grounds Superintendent or designee.

G. CHARGES

Billable hours paid under this contract shall be only for productive hours at the job site. The Agency will verify billable hours based on the sign in and sign out times of each Contractor employee. Time spent for transportation of workers, materials acquisition, handling, and delivery, or for movement of the Contractor's owned or rental equipment shall not be chargeable directly but should be considered Contractor's overhead and shall be included in the hourly rates quoted for labor or services.

Copies of actual invoices for materials and/or equipment supplied and installed by the Contractor shall show the Contractor's actual cost including any and all discounts offered by their supplier. Materials and equipment prices are subject to verification. The Agency reserves the right to furnish the necessary materials or equipment, and may do so when deemed to be in the best interest of the Commonwealth.

H. PAYMENT

The Contractor will be paid on a project basis. An invoice will be presented for the services performed and shall be submitted within one (1) week after performance of the work, referencing the contract number and work order number. This invoice shall, at a minimum, identify the work that was done, where it was done, when it was done, and who authorized it. Additionally, it will detail the unit cost and extended cost for each wage/labor category, contractor cost for parts and/or materials and costs for equipment rental. Markup on material cost is not permitted and will not be allowed. Unless specified otherwise in a Purchase Order or a Contract Modification, invoices shall be sent to the following address:

Catawba Hospital
Attn: Accounts Payable
P. O. Box 200
Catawba, VA 24070-0200

Catawba Hospital is exempt from federal excise and all state and local taxes. Such taxes shall not be included in the contract price. A tax exemption certificate will be furnished on request to the Contractor.

I. COMPLIANCE WITH HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA):

In the course of carrying out contractual services, the Contractor and its employees will be in areas occupied by patients of Catawba Hospital where they could possibly be subject to patient-related information either directly or indirectly. Any information regarding any patient must be held in the strict confidence. By signature on this Agreement and the Business Associate Agreement (Attachment B), the contractor agrees to comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and, in the performance of this contract (agreement) will:

- Not use or further disclose protected health information (PHI) other than as permitted or required by the terms of this contract or as required by law;
- Use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by the contract;
- Report to the DMHMRSAS any use or disclosure of PHI not provided for by this Contract (Agreement);
- Mitigate, to the extent practicable, any harmful effect that is known to the contractor of a use or disclosure of PHI by the Contractor in violation of the requirements of this contract.

- Impose the same requirements and restrictions on its subcontractors and agents;
- Provide access, at the request of the DMHMRSAS, and in the time and manner designated by the DMHMRSAS, to PHI in a Designated Record Set, to the DMHMRSAS or, as directed by the DMHMRSAS, to an individual in order to meet HIPAA requirements.
- Make available PHI for amendment and incorporate any amendments to PHI;
- Document and provide to DMHMRSAS information relating to disclosures of PHI as required for the DMHMRSAS to respond to a request by an individual for an accounting of disclosures of PHI in accordance with the HIPAA Privacy Rule;
- Make its internal practices, books, and records relating to use and disclosure of PHI available to the Secretary of the U.S. Department of Health and Human Services Secretary for the purposes of determining compliance with the HIPAA Privacy Rule;

At termination of the contract, if feasible, return or destroy all PHI received from, or created or received by the Contractor on behalf of the Contracting Agency (DMHMRSAS) that the business associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

III. MANDATORY PRE-BID CONFERENCE

A mandatory pre-bid conference will be held at 10:00 a.m. on March 17, 2005, in the Main Hospital Building, No. 15, First Floor Conference Room. The purpose of this conference is to allow potential Bidders an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

Due to the importance of all bidders having a clear understanding of the Scope of Work and requirements of this solicitation, attendance at this conference will be a prerequisite for submitting a bid. Bids will only be accepted from those bidders who are represented at this pre-bid conference. Attendance at the conference will be evidenced by the representative's signature at the attendance roster. **No one will be admitted after 10:00 a.m.**

Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

IV. PRICING SCHEDULE

The Bidder agrees to provide the services in compliance with the Scope of Work and Terms and Conditions at the following price: **(Consideration for all expenses for material handling should be included in your hourly rates. State law allows no additional cost(s) or cost/plus.)**

| PERSONNEL | HOURLY RATE |
|---|-------------|
| 1. Carpenter: | per hour |
| 2. Laborer: | per hour |
| 3. Electrical Subcontractor: | per hour |
| 4. Plumbing Subcontractor: | per hour |
| 5. Mechanical Subcontractor: | per hour |
| 6. Miscellaneous Discounts (volume, payment, etc.): | |
| | |
| | |

V. GENERAL TERMS AND CONDITIONS

- A. **VENDORS MANUAL:** This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under "Manuals."
- B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- C. **ANTI-DISCRIMINATION:** By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).
- D. In every contract over \$10,000 the provisions in 1. and 2. below apply:
1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- E. **ETHICS IN PUBLIC CONTRACTING:** By submitting their bids, bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

- F. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their bids, bidders certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- G. **DEBARMENT STATUS:** By submitting their bids, bidders certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- H. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- I. **MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs:**
Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the contract shall be effective unless reduced to writing and signed by the parties.
- J. **CLARIFICATION OF TERMS:** If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- K. **PAYMENT:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
1. **To Prime Contractor:**
- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
 - d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

- e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges, which appear to be unreasonable, will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges, which are not in dispute (*Code of Virginia*, § 2.2-4363).

2. To Subcontractors:

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 - (2) To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
 - b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.

L. **PRECEDENCE OF TERMS:** The following General Terms and Conditions *Vendor's Manual*, applicable laws and courts, anti-discrimination, ethics in public contracting, immigration reform and control act of 1986, debarment status, antitrust, mandatory use of state form and terms and conditions, clarification of terms, payment shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

M. **QUALIFICATIONS OF BIDDERS:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the services/furnish the goods and the bidder shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The Commonwealth further reserves the right to reject any bid if the evidence submitted by, or investigations of, such bidder fails to satisfy the Commonwealth that such bidder is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

N. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

- O. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- P. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- Q. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the Commonwealth may have.
- R. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

- S. **INSURANCE:** By signing and submitting a bid under this solicitation, the bidder certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 per occurrence.

- T. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- U. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- V. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All bidders must register in eVA; failure to register will result in the bid being rejected.

1. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding.
2. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

VI. SPECIAL TERMS AND CONDITIONS

- A. **ADVERTISING** In the event a contract is awarded for supplies, equipment, or services resulting from this bid, no indication of such sales or services to the Catawba Hospital will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.
- B. **ASBESTOS**: Whenever and wherever during the course of performing any work under this contract, the contractor discovers the presence of asbestos or suspects that asbestos is present, he shall stop the work immediately, secure the area, notify the building owner and await positive identification of the suspect material. During the downtime in such a case, the contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the contractor but without additional compensation due to the time extension.
- C. **AS BUILT DRAWINGS**: The contractor shall provide the Commonwealth a clean set of reproducible “as built” drawings and wiring diagrams, marked to record all changes made during installation or construction. The contractor shall also provide the Commonwealth with maintenance manuals, parts lists and a copy of all warranties for all equipment. All “as built” drawings and wiring diagrams, maintenance manuals, parts lists and warranties shall be delivered to the Commonwealth upon completion of the work and prior to final payment.
- D. **AUDIT**: The contractor shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- E. **AVAILABILITY OF FUNDS**: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- F. **AWARD TO OTHER THAN THE LOWEST PRICED BIDDER(S)**: An award(s) will be made to the lowest responsive and responsible bidder(s) however; the award may be made to a reasonably priced minority or woman-owned bidder(s) that is other than the lowest priced bidder(s) when such purchases are made under a remedial procurement plan established in accordance with guidelines prescribed by the Department of Minority Business Enterprise (DMBE). Evaluation will be based on net prices. Unit prices, extensions and grand total must be shown. In case of arithmetic errors, the unit price will govern. If cash discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for prompt payment will not be considered in making awards. The right is reserved to make a separate award of each item, a group of items or all items, and to make an award either in whole or in part, whichever is deemed in the best interest of the Commonwealth. The State reserves the right to reject any and all bids in whole or in part, to waive any informality, and to delete items prior to making an award.
- G. **BID ACCEPTANCE PERIOD**: Any bid in response to this solicitation shall be valid for (60) days. At the end of the (60) days the bid may be withdrawn at the written request of the bidder. If the bid is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.
- H. **BID PRICES**: Bid shall be in the form of a firm unit price for each item during the contract period.

- I. **CANCELLATION OF CONTRACT:** The purchasing agency reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

- J. **CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT:** By my signature on this solicitation, I certify that this firm/individual and subcontractor is properly licensed for providing the goods/services specified.

Contractor Name: _____ Subcontractor Name: _____

License # _____ Type _____

- K. **CONTRACTOR REGISTRATION:** If a contract for construction, removal, repair or improvement of a building or other real property is for seventy thousand dollars (\$70,000) or more, or if the total value of all such contracts undertaken by bidder within any 12-month period is five hundred thousand dollars (\$500,000) or more, the bidder is required under Title 54.1-1100, *Code of Virginia* (1950), as amended, to be licensed by the State Board of Contractors a "CLASS A CONTRACTOR." If such a contract is for seventy-five hundred dollars (\$7,500) or more but less than seventy thousand dollars (\$70,000), (one thousand dollars [\$1,000] for electrical, plumbing and HVAC work) the bidder is required to be licensed as a "CLASS B CONTRACTOR." If such a contract is for one-thousand dollars (\$1,000) or more but less than seventy-five hundred dollars (\$7,500) and is not for electrical, plumbing and HVAC work, the bidder is required to be licensed as a "CLASS C CONTRACTOR." The bidder shall place on the outside of the envelope containing the bid/proposal and shall place in the bid/proposal over his signature whichever of the following notations is appropriate, inserting his contractor license number:

Licensed Class A Virginia Contractor No. _____
Specialty _____
Licensed Class B Virginia Contractor No. _____
Specialty _____
Licensed Class C Virginia Contractor No. _____
Specialty _____

If the bidder shall fail to provide this information on his bid/proposal or on the envelope containing the bid/proposal and shall fail to promptly provide said contractor license number to the Commonwealth in writing when requested to do so before or after the opening of bids/proposals, he shall be deemed to be in violation of § 54.1-1115 of the *Code of Virginia* (1950), as amended, and his bid/proposal will not be considered.

If a bidder shall fail to obtain the required license prior to submission of his bid/proposal, the bid/proposal shall not be considered.

- L. **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.

- M. **CRIMINAL HISTORY:** The Purchasing Agency reserves the right to restrict activities required to provide the services herein to only those persons who are without criminal conviction. This restriction shall not relieve the Contractor of any requirements herein. Upon request of the Agency, the Contractor shall obtain a criminal history background check on any person, employee or subcontractor used for the delivery of services herein. The Agency may, in its sole decision, determine that an individual possessing a criminal conviction poses no risk or threat to the Agency, its employees or clients, and may waive this restriction on a case-by-case basis.

- N. **DELIVERY AND STORAGE:** It shall be the responsibility of the contractor to make all arrangements for delivery, unloading, receiving and storing materials in the building during installation. The Agency will not assume any responsibility for receiving these shipments. Contractor shall check with the Agency and make necessary arrangements for security and storage space in the building during installation.
- O. **FINAL INSPECTION:** At the conclusion of the work, the contractor shall demonstrate to the authorized agency representative that the work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the contractor at the contractor's sole expense prior to final acceptance of the work.
- P. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** If a special envelope is not furnished, or if return in the special envelope is not possible, the signed bid should be returned in a separate envelope or package, sealed and identified as follows:

| | | |
|--|-----------------|-------|
| From: _____ | _____ | _____ |
| Name of Bidder | Due Date | Time |
| _____ | _____ | |
| Street or Box Number | IFB No./RFP No. | |
| _____ | _____ | |
| City, State, Zip Code | IFB/RFP Title | |
| Name of Contract/Purchase Officer or Buyer _____ | | |

The envelope should be addressed as directed on Page 1 of the solicitation.

If a bid not contained in the special envelope is mailed, the bidder takes the risk that the envelope, even if marked as described above, may be inadvertently opened and the information compromised which may cause the bid to be disqualified. Bids may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other bids should be placed in the envelope.

- Q. **INSPECTION OF JOB SITE:** My signature on this solicitation constitutes certification that I have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the Commonwealth.
- R. **SMALL, WOMEN, AND MINORITY-OWNED BUSINESSES SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**
1. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such business to small, women, and/or minority-owned (SWAM) businesses. If SWAM subcontractors are used, the prime contractor agrees to report the use of SWAM subcontractors by providing the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (small, women, or minority-owned), and type of product/service provided.
 2. Each prime contractor who wins an award in which provision of a small, women or minority-owned (SWAM) procurement plan is a condition of the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (small, women, or minority-owned), and type of product/service provided. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate remedies may be assessed in lieu of withholding such payment.

S. **NEGOTIATION WITH THE LOWEST BIDDER:** Unless all bids are cancelled or rejected, the Commonwealth reserves the right granted by § 2.2-4318 of the *Code of Virginia* to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the agency whenever such low bid exceeds the agency's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds, which were budgeted by the agency for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The agency shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the agency wishes to negotiate a lower contract price. The times, places, and manner of negotiating shall be agreed to by the agency and the lowest responsive, responsible bidder.

T. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.

U. **REFERENCES:** Bidders shall provide a list of at least five (5) references where similar goods and/or services have been provided. Each reference shall include the name of the organization, the complete mailing address, the name of the contact person and telephone number. (Attachment A)

| <u>ORGANIZATION</u> | <u>ADDRESS</u> | <u>CONTACTPERSON</u> | <u>TELEPHONE</u> |
|---------------------|----------------|----------------------|------------------|
|---------------------|----------------|----------------------|------------------|

| | | | |
|----------|-------|-------|-------|
| 1. _____ | _____ | _____ | _____ |
|----------|-------|-------|-------|

V. **RENEWAL OF CONTRACT:** This contract may be renewed by the Commonwealth for four (4) successive one year periods under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 60 days prior to the expiration date of each contract period.

1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the CPI-W section of the consumer Price Index of the United States Bureau of Labor Statistics, Table 4, Commodity and Service Group "Other Services" category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the CPI-W section of the consumer Price Index of the United States Bureau of Labor Statistics, Table 4, Commodity and Service Group "Other Services" category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

W. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the purchasing agency. In the event that the contractor desires to subcontract some part of the work specified herein, the contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

X. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the Commonwealth's satisfaction at the contractor's expense.

- Y. **eVA BUSINESS-TO-GOVERNMENT CONTRACTS AND ORDERS:** The contract will result in one eVA purchase order(s) with the 1% transaction fee capped at \$500 per order.

The eVA transaction fee will be assessed approximately 30 days after each purchase order is issued. Any adjustments (increases/decreases) will be handled through eVA change orders.

Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

If this solicitation is for a term contract, failure to comply with the requirements in a. and b. below will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default.

1. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from www.eva.state.va.us. AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.
2. Provide an electronic catalog (price list) or index page catalog for items awarded under a term contract. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eva.state.va.us. Contractors should e-mail Catalog or Index Page information to eva-catalog-manager@dgs.state.va.us.

**CATAWBA HOSPITAL
CATAWBA, VIRGINIA**

ATTACHMENT A

REFERENCE SHEET

To Be Completed By Bidder

1. **QUALIFICATION OF BIDDER:** The Bidder must have the capability and capacity in all respects to fully satisfy all of the contractual requirements.
2. **YEARS IN BUSINESS:** Indicate the length of time you have been in business providing this type of service: _____ years ____ months.
3. **REFERENCES:** Indicate below a list of least five (5) recent references for which you have provided carpentry services. Include the date service was furnished and the name and address of the person the Agency has your permission to contact.

| DATE | CLIENT NAME AND ADDRESS | CONTACT PERSON & PHONE NUMBER |
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ATTACHMENT B

**COMMONWEALTH OF VIRGINIA
CATAWBA HOSPITAL
CATAWBA, VIRGINIA**

Standards for Privacy of Individually Identifiable Health Information

BUSINESS ASSOCIATE CONTRACT

The U.S. Department of Health and Human Services ("HHS") has issued regulations pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), governing the privacy of individually identifiable health information obtained, created or maintained by certain entities. As a valued BUSINESS ASSOCIATE, we will make available and/or transfer certain information, in conjunction with goods or services that are being provided by the BUSINESS ASSOCIATE to the COVERED ENTITY, which is confidential and must be afforded special treatment and protection.

THIS CONTRACT:

This Business Associate Contract ("Contract") is made as of this _____ day of _____, 2004, by Catawba Hospital, an Agency of the Commonwealth of Virginia (herein referred to as "Covered Entity") and _____ (herein referred to as "Business Associate").

WITNESSETH:

WHEREAS, THE COVERED ENTITY will make available and/or transfer to the BUSINESS ASSOCIATE certain information, in conjunction with goods or services that are being provided by the BUSINESS ASSOCIATE to the COVERED ENTITY, that is confidential and must be afforded special treatment and protection. WHEREAS, THE BUSINESS ASSOCIATE will have access to and/or receive from the COVERED ENTITY certain information that can be used or disclosed only in accordance with this CONTRACT and the HHS Privacy Regulations.

WHEREAS, THE COVERED ENTITY and THE BUSINESS ASSOCIATE agree to limits on use and disclosure established by the Terms and Conditions of this Contract. The BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the information provided or made available by the COVERED ENTITY for any purpose than as expressly permitted or required by the Contract.

The Terms and Conditions of this Contract shall be effective as of _____, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions.

I. DEFINITIONS:

As used in this Contract, the terms below will have the following meanings:

- (a) *Business Associate* shall mean (name of business).
- (b) *Business Associate Contract* (BAC) means a written contract between a covered entity and its Business Associate. The contractual provisions provide that the Business Associate shall:
 - ❖ only use or disclose protected health information (PHI) as permitted under the contract and not in a manner that would violate the Privacy Standards if such actions were taken by the covered entity;
 - ❖ use appropriate safeguards to prevent use or disclosure of PHI except as permitted by the contract;
 - ❖ report any known misuse of PHI to the covered entity;
 - ❖ impose the same requirements on its subcontractors and agents;
 - ❖ make PHI and an accounting of disclosures available to individuals as required by the HIPAA Privacy Standards;

- ❖ make its internal practices, books and records relating to use and disclosure of PHI available to the Department of Health and Human Services Secretary; and
 - ❖ at termination of the contract; if feasible, return or destroy all PHI received from, or created or received by the Business Associate on behalf of the covered entity that the Business Associate still maintains in any form and retain no copies of such information or, if such return or destruction is not feasible, extend the protections of the contract to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- (c) *Covered Entity* shall mean Catawba Hospital, an agency of the Commonwealth of Virginia.
- (d) *Disclosure* shall mean the release, transfer, provision or access to, or divulging in any other manner of information outside the entity holding the information.
- (e) *HIPAA* is the acronym for the Health Insurance Portability and Accountability Act of 1996, which is a federal law that allows persons to qualify immediately for comparable health insurance coverage when they change their employment relationships. Title II, Subtitle F, of HIPAA gives the federal Department of Health and Human Services the authority to mandate and specify the use of standards for the electronic exchange of health care data; to specify what medical and administrative code sets should be used within those standards; to require the use of national identification systems for health care patients, providers, payers (or plans), and employers (or sponsors); and to specify the types of measures required to protect the security and privacy of personally identifiable health care information. Also known as the Kennedy-Kasselbaum Bill, the Kasselbaum-Kennedy bill, K2, or Public Law 104-191.
- (f) *Individual* means the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (g) *Individually Identifiable Health Information (IIHA)*: IIHA shall mean information that is a subset of health information, which can include demographic information collected from an individual; and
- ❖ is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
 - ❖ relates to the past, present, or future physical or mental health care to an individual; or the past, present, or future payment for the provision of healthcare to an individual; and
 - identifies the individual, or
 - with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (h) *Interpretation*: Any ambiguity in this Contract shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.
- (i) *Memorandum of Understanding (MOU)* means an arrangement between a covered entity and its Business Associate that can be used in lieu of a BAC if it contains provisions that are sufficient to accomplish the same objectives as a BAC for safeguarding the use and disclosure of PHI. A MOU is typically used by two government agencies with a working relationship that is required by law, when it is not feasible for such agencies to carry out all of the contractual requirements of a BAC.
- (j) *Protected Health Information (PHI)* means individually identifiable health information:
- ❖ transmitted by electronic media;
 - ❖ maintained in any medium described in the definition of electronic media at 45 CFR 162.103;
 - ❖ transmitted or maintained in any other form or medium.

PHI excludes individually identifiable health information in:

- ❖ education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g; and

- ❖ records described at 20 U.S.C. 132g(a)(4)(B)(iv). *Psychotherapy notes* means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group joint, or family counseling session and that are separated from the rest of the individuals medical record.
- (k) *Privacy Officer* means the covered entity's designated official who is responsible for the development and implementation of its HIPAA privacy policies and procedures.
- (l) *Psychotherapy notes* excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.
- (m) *Regulatory References*: A reference in this Contract to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- (n) *Required by law* means a mandate contained in law that compels a covered entity to make a use or disclosure of protected health information and that is enforceable in a court of law.
- (o) *Required by law* includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- (p) *Secretary* shall mean the Secretary of the Department of Health and Human Services or his designee.
- (q) *Survival*: The respective rights and obligations of Business Associate under Section 8, "Effect of Termination" of this Contract shall survive the termination of the Contract.
- (r) *Treatment* means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.
- (s) *Use* means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis or such information within an entity that maintains such information.
- (t) *Catch-all definition*: Terms used, but not otherwise defined, in this Contract shall have the same meaning as those terms in 45 CFR 160.103 and 164.501.

II. GENERAL CONDITIONS:

1. PROVISIONS FOR BUSINESS ASSOCIATE CONTRACTS:

- 1.1 HIPAA privacy regulations allow Catawba Hospital to share PHI with Business Associates who are engaged to assist in carrying out various health care activities when Catawba Hospital has entered into a Business Associate contract with the individual Business Associate. Such contracts assure that the Business Associate will (i) use the PHI only for the purpose for which it was engaged; (ii) safeguard the information from misuse; and (iii) help Catawba Hospital to comply with its duty to provide patients or residents with access to health information about them and a history of certain disclosures.

2. THE PARTIES:

2.1 Hereby agree that Business Associate shall be permitted to use and/or disclose information provided or made available from the covered entity while protecting the confidentiality and integrity of PHI required law, professional ethics, and accreditation requirements, for the following stated purposes:

- (a) Business Associate is permitted to use information if necessary for the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate.
- (b) Business Associate is permitted to disclose information received from Covered Entity for the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate, provided the disclosure is required by law; or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies the Business Associate of any instance of which it is aware in which the confidentiality of the information has been breached.
- (c) Business Associate is also permitted to use or disclose information to provide data aggregation services, as that term is defined by 45 C.F.R 164.501, relating to the healthcare operations of the covered entity.
- (d) Business Associate will establish and maintain appropriate safeguards to prevent any use or disclosure of the information, other than as provided for by the contract.

3. USE AND DISCLOSURE OF PHI:

- 3.1 Business Associate shall not use PHI otherwise than as expressly permitted by this Contract, or as required by law. However, Business Associate may use PHI for purposes of managing its internal business processes relating to its functions under this Contract.
- 3.2 Business Associate shall implement and maintain appropriate safeguards to prevent the use and disclosure of PHI, other than as provided in this Contract. Upon reasonable request, Business Associate shall give Covered Entity access for inspection and copying to Business Associate's facilities used for the maintenance and processing of PHI, and to its books, records, practices, policies and procedures concerning the use and disclosure of PHI, for the purpose of determining Business Associate's compliance with this Contract.
- 3.3 Business Associate shall maintain an ongoing log of the details relating to any disclosures of PHI it makes (including, but not limited to, the date made, the name of the person or organization receiving the PHI, the recipient's address, if known, a description of the PHI disclosed, and the reason for the disclosure). Business Associate shall, within thirty- (30) days of Covered Entity's request, make such log available to Covered Entity, as needed for Covered Entity to provide a proper accounting of disclosures to its patients.
- 3.4 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI received from Covered Entity, or created or received by the Business Associate on behalf of the Covered Entity agree in writing to the same restrictions, terms, and conditions relating to PHI that apply to the Business Associate in this Contract. Covered Entity shall have the option to review and approve all such written agreements between Business Associate and its agents and subcontractors prior to their effectiveness.

- 3.5 Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity available to the Secretary of DHHS or its designee, in a time and manner designated by the Covered Entity or the Secretary, for purposes of determining Covered Entity's compliance with HIPAA and with the Privacy Regulations issued pursuant thereto. Business Associate shall provide Covered Entity with copies of any information it has made available to DHHS under this section of this Contract.
- 3.6 Business Associate shall provide to Covered Entity or an Individual within thirty- (30) days of request by Covered Entity, information collected in accordance with Section 3.3 of this Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. 164.528.
- 3.7 Business Associate shall report to Covered Entity within thirty- (30) days of discovery, any use or disclosure of PHI made in violation of this Contract or any law. Business Associate shall implement and maintain sanctions for any employee, subcontractor, or agent who violates the requirements in this Contract or the HIPAA privacy regulations. Business Associate shall, as requested by Covered Entity, take steps to mitigate any harmful effect of any such violation of this Contract.
- 3.8 Business Associate shall make PHI available for amendment and correction and shall incorporate any amendments or corrections to PHI within thirty- (30) days of notification by Covered Entity.

4. *DISCLOSURE OF PHI REQUIRED IN CONTRACTS FOR GOODS & SERVICES:*

- 4.1 When Covered Entity contract for goods or services, and disclosure of PHI is a result but not the primary function of such contractual *relationship*, the individual or Entity contracting with the Covered Entity must comply with requirements for Business Associates consistent with HIPAA regulations.
- 4.2 Each Covered Entity contract office shall ensure that all contracts executed by the Covered Entity for goods and services, which also require the Covered Entity to disclose PHI, include provisions to safeguard PHI consistent with HIPAA requirements for Business Associates.
- ❖ Covered Entity contract offices shall administer such contracts in accordance with its standard office procedures.
 - ❖ Each Covered Entity contract officer shall consult with the Covered Entity's privacy official to resolve any issues regarding the compliance of such contracts with HIPAA provisions.

4.3 *Obligations of Covered Entity:*

- (a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522.
- (d) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

5. **EXCEPTIONS TO BAC REQUIREMENT:**

5.1 BACs are not required when:

- ❖ The Covered Entity discloses PHI to a health care provider for treatment purposes.
- ❖ The financial institution acting on behalf of the Covered Entity receives, uses or discloses PHI to process financial transactions by debit, credit or other payment card; clears checks; initiates or processes electronic fund transfers; or conducts any other activity that directly facilitates or effects the transfer of funds for compensation of health care, when such transaction is conducted by patients or residents of Covered Entities facilities.
- ❖ Other laws or regulations govern a Business Associate, and contain requirements sufficient to accomplish the purpose of the BAC.

5.2 When a Business Associate is required by law to perform certain functions or activities included in the definition of “Business Associate” on behalf of the Covered Entity, PHI may be disclosed to that entity to the extent necessary to comply with such legal mandate without entering into a BAC. In such instances:

- ❖ A MOU should be obtained; or
- ❖ The responsible staff should document the inability and reasons that a MOU has not been obtained.

5.3 When it is not possible to terminate the MOU, or impractical to include a termination clause within an MOU, the Covered Entity or a facility shall report known violations to the chief privacy officer for reporting to the Secretary of Health and Human Services.

6. **BUSINESS ASSOCIATE CONTRACT BREACH:** A BAC breach occurs whenever a Business Associate violates a material term or condition of the BAC.

6.1 When the Covered Entity becomes aware of a breach, it shall:

- ❖ Take reasonable steps to cure the breach, **or**
- ❖ Terminate the contract, **or**
- ❖ Report the breach to the chief privacy officer for reporting to the Secretary of Health and Human Services, if termination would be unreasonably burdensome (i.e. no viable alternatives are available).

“Reasonable steps” will vary with the circumstances and the nature of the business relationship and shall be taken in consultation with the chief privacy officer in the Covered Entity.

“Unreasonably burdensome” does not mean it is merely more convenient or less costly to do business with the Business Associate in breach of the contract than with other potential Business Associates.

Any whistle blowing disclosure by the Business Associate does not impose a duty on the Covered Entity to correct, cure, or terminate the relationship.

III. **TERMINATION FOR CAUSE:**

- (a) Covered Entity may immediately terminate this Contract if Covered Entity determines that Business Associate has violated a material term of this Contract. This Contract shall remain in effect unless terminated for cause by Covered Entity with immediate effect, or until terminated by either party with not less than thirty- (30) days prior written notice to the other party, which notice shall specify the effective date of the termination; provided, however, that any termination shall not affect the respective obligations

or rights of the parties arising under any Documents or otherwise under this Contract before the effective date of termination. Within thirty- (30) days of expiration or earlier termination of this Contract, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such PHI. Business Associate shall provide a written certification that all such PHI has been returned or destroyed, whichever is deemed appropriate. If such return or destruction is infeasible, Business Associate shall use such PHI only for purposes that make such return or destruction infeasible and the provisions of this Contract shall survive with respect to such PHI.

- (b) Covered Entity may choose to provide an opportunity for Business Associate to cure the violation with written notice of the existence of the violation and provide Business Associate with thirty- (30) days to cure said violation upon mutually agreeable terms. Failure by Business Associate to cure said violation within the terms as mutually agreed shall be grounds for immediate termination and the provisions provided in paragraph (a) of this section shall apply.

IV. AMENDMENT:

Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of a court of the United States or of this state relating to any such law, or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, Covered Entity may, by written notice to the Business Associate, amend this Contract in such manner as Covered Entity determines necessary to comply with such law or regulation. If Business Associate disagrees with any such amendment, it shall so notify Covered Entity in writing within thirty- (30) days thereafter, either of them may terminate this Contract by written notice to the other.

V. NOTICES:

Whenever under the Contract one party is required to give notice to the other, such notice shall be deemed given if mailed by first class United States mail, postage prepaid, to the following:

Business Associate:

Attn:

Covered Entity: Catawba Hospital

Attn: Robyn J. Wright, CPPB, VCO

Director of Purchasing & Contracting

P. O. Box 200

Catawba, Virginia 24070

Notice of a change in address of one of the parties shall be given in writing to the other party as provided above.

VI. DISPUTES:

If any controversy, dispute or claim arises between the Parties with respect to this Contract, the Parties shall make good faith efforts to resolve such matters informally.

VII. FEES:

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this Contract, each party shall bear their own legal expenses and the other cost incurred in that action or proceeding.

VIII. ENTIRE AGREEMENT:

The Contract consists of this document, and constitutes the entire agreement between the Parties. There are no understandings or agreements relating to this Contract which are not fully expressed in this Contract and no change, waiver or discharge of obligations arising under this Contract shall be valid unless in writing and executed by the Party against whom such change, waiver, or discharge is sought to be enforced.

IN WITNESS WHEREOF:

BUSINESS ASSOCIATE and COVERED ENTITY have caused this Contract to be signed and delivered by their duly authorized representatives, as of the date set forth above.

BUSINESS ASSOCIATE

COVERED ENTITY

Signature

Signature

Don Obenshain

Printed Name

Printed Name

Compliance Officer

Title

Title

Date

Date